IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 559 of 2004

to

SPECIAL CIVIL APPLICATION No 589 of 2004

with

SPECIAL CIVIL APPLICATION No 414 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKH ABUBHAI RAHEMANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 559 of 2004

MR MEHUL SHARAD SHAH for Petitioner No. 1

..... for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 20/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

1. In these group of writ petitions under Article 226 of the Constitution of India, the main grievance of the petitioners which has come to the surface is that the decision of the respondent authority to demolish shops of the petitioners, after issuance of notice dated 11/12/03, issued by respondent no.3 - Unava Gram Panchayat, invoking the statutory provisions of section 105 of the Gujarat Panchayat Act, 1993, as pointed out from the impugned notice by the learned AGP Ms.Devani while appearing for respondent no.1 under instructions that all the petitioners have been served with notice u/s.105(1) of the Gujarat Panchayat Act, as the petitioners are encroachers and have no legal right. It may, also, be stated that the notice for demolition and subsequent drive for demolition/removal of the unauthorized construction and encroachments on the government land, which appears to have been given to the Panchayat, is under challenge. However, the second prayer in these group of petitions for regularization of the unauthorized construction on the government/panchayat land is ipso facto, also, indicative of the fact that the petitioners have not claimed any proprietory right.

2. The learned advocate Mr.M S Shah appearing for the petitioners in these group states at the bar under instructions that the petitioners would like to make representation to the Taluka Development Officer of Unjha Taluka Panchayat, under whose instructions the demolition drive is undertaken, and he further makes a statement that the Panchayat authority should be directed to dispose of the representation within a reasonable period of time and till then, protection may be given, as the petitioners are, also, ready to accept the decision that may be rendered on the representation of each petitioner as final, and each petitioner shall file an undertaking to such an effect within a period of two weeks from today before the registry of this Court. It is, therefore, submitted by him that the petitioners may be permitted to make representations within a period of two weeks on the aforesaid submissions and assurance.

3. It is, therefore, we are inclined to permit the

petitioners to make the representation, more so, when the learned advocate Mr.Shah has made a statement at the bar on behalf of the petitioners that the decision or order that may be rendered in the representation shall be taken as final and will be obeyed and implemented by the petitioners and to such an effect, the affidavit of each petitioner shall be lodged before the registry. Without entering into the merits of the matter, we pass the following order;

(i) The petitioners are permitted to make representation to respondent no.2 (i.e. the Taluka Development Officer) within a period of two weeks from today, alongwith all necessary particulars and documents they rely on, and upon such representation being made, the respondent no.2 within a period of four weeks thereafter, shall not execute the demolition drive, till the representation is decided, or the impugned notice in each case shall not be implemented, provided each petitioner files an undertaking in the aforesaid terms and in the terms stated at the bar by the learned advocate Mr.Shah for the petitioners within a period of two weeks before the registry of this Court.

(ii) In case if no representation or representations of the petitioners are filed or in case the undertaking or undertakings are not filed by the petitioners within the stipulated time indicated hereinabove, the embargo against the demolition and implementation of the impugned notice shall not stand.

4. In view of the aforesaid submissions, assurances at the bar and the facts and circumstances, the petitions shall stand disposed of on the aforesaid terms at admission stage. A copy of this order may be placed in all the connected matters.

5. Learned advocate Mr.Shah states that the intimation about having passed such an order today may be directed to be indicated to respondent no.2 and 3 by speediest mode and also by direct service at the cost of the petitioners. The above request is accepted.

(J. N. Bhatt, J.)

(K. A. Puj, J.)

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